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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91178943
Party	Defendant DM Enterprises & Distributors, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application No. 75/697,908
Publication date: April 17, 2007
For the Mark: CUBITA

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CORPORACION CIMEX S.A.,)	
)	
Opposer,)	
)	Opposition No. 91178943
v.)	
)	
DM ENTERPRISES &)	
DISTRIBUTORS, INC.,)	
)	
Applicant.)	
-----)	

**APPLICANT DM ENTERPRISES & DISTRIBUTORS INC.'S RESPONSE
TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT, AND CROSS-MOTION
FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Now comes Applicant DM Enterprises & Distributors, Inc.'s ("DM" or "Applicant") which, pursuant to 37 C.F.R. §2.127 and Rule 56 of the Federal Rules of Civil Procedure, respectfully moves the United States Trademark and Trial Appeal Board (this "Board") to deny Opposer Corporation Cimex, S.A.'s ("Cimex" or "Opposer") Motion for Summary Judgment and, further, to grant Applicant's Cross-Motion for Summary Judgment, and states the following in support thereof:

Introduction

For almost a decade, Applicant has used the "CUBITA" mark to identify its private brand of coffee beans, which Applicant has sold openly and conspicuously to customers throughout the United States. It turns out, however, that while Applicant was investing significant time, money

and effort in building brand loyalty, customer trust and, consequently, trademark rights in the United States, Opposer was lying in wait, watching and vying for the day when it could run an interference plan against Applicant—regardless of whether or not it had legitimate grounds to do so. For Opposer, that day has come. Under the imprimatur of the instant opposition proceeding, Opposer seeks to decimate everything that Applicant has worked so hard to achieve.

Opposer has no standing to bring the instant proceedings, has abandoned any plans it may have had to use the CUBITA mark in the United States, and has acquiesced in Applicant's use of the CUBITA mark for almost a decade. Individually, any of these are sufficient grounds to deny Opposer's motion for summary judgment. Collectively, however, they lead to one inescapable conclusion: Applicant has not violated any law or treaty, and its trademark application should be permitted to continue unabated.

STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Opposer's CUBITA Coffee Mark.

Applicant hereby affirms that all facts listed in Opposer's Motion for Summary Judgment under the above-described heading are, in fact, undisputed.

B. Applicant's CUBITA Coffee Mark.

Applicant hereby affirms that all facts listed in Opposer's Motion for Summary Judgment under the above-described heading are, in fact, undisputed, with the exception and/or addition of the following facts:

(i) Applicant filed its application for the CUBITA mark for coffee in 1999 (see Application filed with the United States Patent and Trademark Office, Serial No. 75/697,908 dated May 4, 1999)¹;

¹ Applicant maintains that it has the right to claim first use of the CUBITA mark in the United States as early as 1994; however, as discussed herein, the five year difference between 1994 and 1999 is absolutely immaterial to the

(ii) The TTAB in the *DM Enters. & Distributors, Inc. v. Ruta Maya Royalty, Ltd.*, Canc. No 92029327 (T.T.A.B. May 28, 2004) found unequivocally that Applicant's use of the CUBITA mark in the United States began in 1999. *Id.* at 12; *see id.* At 16 ("Petitioner's direct first use of the mark occurred in July 1999")²; and,

(iii) The TTAB considered the issue of misdescriptiveness with regard to Applicant's packaging and use of the CUBITA mark, and held that Applicant's use of the mark was not misdescriptive. *In re Timothy J Sheehan*, 1998 WL 611625 (T.T.A.B. September 10, 1998).

C. Applicant's Prior Knowledge of the Use of the Cuban CUBITA Mark For Coffee

Applicant hereby affirms that all facts listed in Opposer's Motion for Summary Judgment under the above-described heading are, in fact, undisputed, with the exception and/or addition of the following facts:

(i) Applicant objects to, and expressly rejects, any implication that Applicant intended to feed off of the goodwill of Opposer's Cuban CUBITA mark when it filed its specimen of use in 1999. Indeed, as discussed in the record (and decision) of the *DM Enters. & Distributors, Inc. v. Ruta Maya Royalty, Ltd.* case cited above, Applicant had purchased the right to use the CUBITA mark in the United States from Alonzo and Angel, a person who claimed to own such rights in the United States; and,

(ii) Applicant objects to, and expressly rejects, any implication that Applicant knew, or participated, in any "scam" by Angel and Alonzo concerning Cuban marks.

outcome of this case, as continuous use since 1999 is more than sufficient time for Applicant to develop and own trademark rights in the name, CUBITA. Without conceding this point and solely for the purpose of avoiding lengthy arguments over an immaterial issue, Applicant will hereinafter cite 1999 as its date of first use of the mark, CUBITA, in interstate commerce.

² See Note 1, above.

I. OPPOSER IS NOT ENTITLED TO SUMMARY JUDGMENT ON ITS IAC CLAIM.

Summary judgment shall be granted to the moving party if the movant establishes “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). In the case at bar, the material facts are, by large, agreed upon. Nonetheless, the law does not favor Opposer’s position in this matter, as Opposer does not have standing to bring the instant opposition proceedings. Assuming *arguendo* that standing existed, Opposer has both abandoned his right to pursue any U.S. trademark rights in the U.S., and has acquiesced—for almost a decade—in Applicant’s use of the mark at issue. Consequently, summary judgment should be denied for Opposer, but granted in favor of Applicant.

A. OPPOSER DOES NOT HAVE STANDING TO OPPOSE APPLICANT’S REGISTRATION OF THE CUBITA MARK.

Opposer’s motion for summary judgment must not only be denied, but Applicant’s cross motion for summary judgment should be granted since Opposer has no standing to bring this opposition proceeding before the Trademark Trial and Appeal Board (“TTAB”). The Federal Courts and TTAB have fashioned a two-part test to determine whether a party has standing to oppose a trademark registration application pending before the United States Patent and Trademark Office (“USPTO”)—and Opposer’s opposition pleadings and motion for summary judgment utterly fail in all respects to satisfy the test.

i. The Test Requires Opposer To Prove Both A “Real Interest” And Likely Damages; Neither of Which Have Been Demonstrated In This Matter.

The test (“Test”) to determine standing in an opposition proceeding before the TTAB requires that an opposer (1) have a “real interest” in the proceeding such that the opposer has a personal stake in its outcome, and (2) have a reasonable basis for believing the opposer will be damaged by the registration. *Ritchie v. Simpson*, 170 F.3d 1092, 1095 (Fed. Cir. 1999); *General Motors Corp. v. Aristide & Co., Antiquaire de Marques*, 2008 WL 1808554, *2 (T.T.A.B. April 21, 2008). The “real interest” requirement stems from a “policy of preventing ‘mere intermeddlers’ who do not raise a real controversy from bringing opposition or cancellation proceedings in the PTO.” *Ritchie*, 170 F.3d at 1025 (citing *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 1028.) The “damage” requirement of the Test is not satisfied if the damages are speculative or remote; the damages must be “likely.” *Cunningham v. Laser Golf Corp.* 222 F.3d 943 (Fed. Cir. 2000).

In general, standing to challenge the registration of a mark is found to exist where the opposer itself holds a mark registered with the USPTO with which the applied-for mark will interfere. *See, e.g., Bass Pro Trademarks, L.L.C. v. Sportsmans Warehouse, Inc.*, 2008 WL 927726 (T.T.A.B. April 04, 2008) (opposer held marks registered with PTO); *General Motors Corp. v. Aristide & Co., Antiquaire de Marques, supra* (opposer held marks registered with PTO); *Cerveceria Modelo v. R.B. Marco & Sons, Inc.*, 55 U.S.P.Q.2d 1298 (T.T.A.B. June 13, 2000) (opposer held marks registered with PTO). As stated by the Federal Circuit: “In the usual case where an opposition is brought under section 2(d), the opposer does have a proprietary interest in a mark, and standing is afforded through its assertion that it will incur some direct

injury to its own established trade identity if an applicant's mark is registered.” *Jewelers Vigilance Committee, Inc. v. Ullenberg Corp.*, 823 F.2d 490, 493 (Fed. Cir. 1987).

Although Opposer lodges its objections pursuant to 2(e)(3) and 2(a), rather than 2(d), the *Ullenberg* court’s explanation is equally applicable to the instant matter given Opposer’s argument that Applicant’s mark will interfere with Opposer’s ability “to eventually market Cuban coffee in the United States”. (Notice of Opposition, ¶41).

**a. The Cuban Embargo Prevents Opposer From Having
A “Real Interest” In These Proceedings.**

In 1963, the United States imposed an embargo on Cuba, the terms of which are embodied in the Cuban Asset Control Regulations (“Regulations”), 31 C.F.R. §515.201 *et. seq.* The Regulations prevent Cuban entities, such as Cimex, from selling products or holding property interests in the United States. Trademark rights are universally recognized as property interests, and are subject to the same restrictions under the Regulations as Cimex’s coffee products themselves. Not surprisingly, therefore, Opposer does not—and cannot—market its products within the United States. (Notice of Opposition, ¶9).

Opposer holds a trademark registration in Cuba for the CUBITA mark; however, that property right held by Cimex must, by federal law, remain outside of the United States as long as the embargo is in place.³ Through these opposition proceedings, Cimex improperly attempts to inject its property right into the United States by usurping Applicant’s trademark rights. This type of activity, if permitted to go forward, would amount to a transfer of Applicant’s property rights to Cimex—which is expressly prohibited by the Regulations. *See* 31 C.F.R.

³ A restricted carve-out has been created for the registration of trademarks with the USPTO by Cuban nationals, but the courts have historically construed any such exception narrowly. 31 C.F.R. §515.527; *Havana Club Holding, S.A. v. alleon S.A.*, 203 F.3d 116, 123-24 (2d Cir. 2000). Notwithstanding the ability of Cuban nationals to register their marks in the United States on certain occasions, it goes without saying that the embargo prohibits these parties from engaging in trade within this country using the registered marks.

§515.201(b)(i) (prohibiting a transfer of property rights, including trademark rights, to a Cuban entity by a person subject to the jurisdiction of the United States); *also*, 31 C.F.R. §515.201(b)(ii) (prohibiting a transfer outside of the United States of property subject to the jurisdiction of the United States, if the transfer is to a Cuban entity).

Since Cimex cannot (i) register its trademark in the United States, (ii) sell any products in the United States, (iii) acquire any property interest (intangible or otherwise) in the United States, or (iv) profit from any goods sold in the United States, it is inconceivable how Cimex could persuasively argue that it has any “real interest” in Applicant’s trademark application.

Cimex tries to imply that its goods make their way to the United States by claiming that Cimex’s CUBITA coffee is sold “in duty free shops in airports in Cuba . . . where charter flights from Miami to Cuba arrive and depart.” (Motion for Summary Judgment, ¶41). Such implications are pointless—they do not provide even a scintilla of evidence that Opposer’s goods are known in the United States, or that Opposer has established any customer loyalty or goodwill whatsoever in the United States.

Given that Cimex is absolutely foreclosed from commercially exploiting the CUBITA mark in the United States, Cimex is left with a single argument, namely, one day, somewhere along the line, Cimex might have the opportunity to sell its goods in the United States. That argument falls flat; it is too speculative to justify the instant opposition proceedings, and fails to satisfy the “real interest” prong of the Test.

**b. The Cuban Embargo Prevents Opposer From Incurring
Any Likely Damage From Applicant’s Trademark Registration.**

Opposer’s claim of damages is specious, speculative, and far too remote to pass muster under the Test. Opposer maintains that it will suffer harm if Applicant’s mark is registered because “[t]he success of CIMEX in marketing 100% Cuban-origin coffee to United States

consumers as soon as U.S. law permits will be damaged and diminished if Applicant is permitted to register ... the mark for coffee[.]” (Notice of Opposition, ¶41)(emphasis added).

Allegations consisting of such speculative and conjectural harm are not sufficient grounds to confer standing in these proceedings, as they do not satisfy the requirement that damage from the pending registration is “likely”. Furthermore, Opposer cannot demonstrate “[a] ... direct commercial interest” in the outcome of these proceedings given the current prohibition of the embargo. *Cunningham v. Laser Golf Corp.* 222 F.3d 943 (Fed. Cir. 2000) (belief in likely damage may be shown through allegation of direct commercial interest); *see also Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1161 (11th Cir. 2002) (“In most settings, a direct commercial interest satisfies the ‘real interest’ test.”). While a “direct commercial interest” is not always prerequisite to a demonstration of likely damage, Opposer has presented only speculative commercial grounds for opposing Applicant’s registration. Speculative harm, grounded in a hypothetical paradigm in which the Cuban embargo is repealed, can hardly be said to be “a direct commercial interest” in any sense of the phrase. Consequently, Opposer cannot claim likely harm in this matter, thus failing to hurdle the second prong of the Test.

c. Prior TTAB Rulings Do Not Support A Determination Of Standing In This Matter.

Standing is a threshold issue in this case. Prior TTAB rulings and Federal Court rulings consistently state that companies similarly situated to Cimex have no standing to bring opposition proceedings such as the instant case. *See, e.g., Havana Club Holding S.A. v. Jimmy Buffett.* 2003 WL 1423117 (TTAB, March 13, 2007); *Empressa Cubana Del Tabaco v. Culbro Corp.*, 399 F.3d 462 (2d. Cir. 2005). Curiously, in its summary judgment motion, Opposer tangentially touches upon the issue of standing through a single footnote, in which Opposer makes a single sweeping and conclusory statement that standing exists. The gist of Opposer’s

single shallow comment is that based upon a TTAB decision in *Corporation Habanos, S.A. v. Guantanamera Cigars, Co.*, 86 U.S.P.Q.2d 1473 (T.T.A.B. 2008), Opposer has standing to oppose Applicant's registration of the CUBITA mark. (Motion for Summary Judgment, p. 5, note 1). Opposer offers no explanation as to why *Habanos* is relevant to this proceeding, and fails to show how the facts of that matter are relevant to this instant case. Indeed, as discussed below, the *Habanos* case presents materially different facts than the facts at bar.

Whether a Cuban company, such as Opposer, has standing to oppose the registration of a mark by a United States corporation is not an issue that has been litigated extensively and is by no means a given, contrary to the suggestion made in Opposer's Motion.

In *Habanos*, Habanos, a Cuban corporation, objected to the registration of a mark by a U.S. company in connection with the promotion of cigars and cigar-smoking paraphernalia made by the U.S. applicant. Habanos sought to register the same trade name in connection with its own cigar products. In support of its position, Habanos introduced into evidence an original letter from the U.S. Department of Treasury which supported Habanos' position. The evidence also illustrated that the applicant had engaged in significant (and arguably purposeful) misdescriptiveness activities, which were clearly intended to confuse consumers.

Based largely upon the Treasury Department's letter, as well as the applicant's activities involving misdescriptiveness, the TTAB determined that Habanos had a "real interest" in the proceedings and permitted Habanos to oppose the registration of the mark by the U.S. applicant. 86 U.S.P.Q.2d at 1473. No facts were presented in the opinion in support of the Board's determination, other than those set forth above.

In the case at bar, a letter from the U.S. Department of Treasury is conspicuously absent. This fact is made all the more interesting when one notices that that counsel for Opposer was the

same counsel that represented Habanos in the *Habanos* matter. Certainly, if such a letter could have been introduced in this case, Opposer would have done so. The lack of the letter speaks volumes about Opposer's right (or lack thereof) to engage in these opposition proceedings.

Further, there is nothing misdescriptive about Applicant's packaging. Applicant's packaging clearly states across its front, "MADE IN THE USA."⁴ Also, the product packaging conveys a "Taste of Cuba"—nowhere does the packaging provide any claim or assertion that it is made in Cuba, or packaged in Cuba.

It is worth noting that Opposer's Notice of Opposition raises the misdescriptiveness issue, but that issue is not raised at all in Opposer's motion for summary judgment. The reason for this is clear: there is simply no misdescriptiveness activity going on. Without any proof of misdescriptiveness, there is no reason to believe that the case at bar is the same or substantially similar to *Habanos*.

Seemingly at odds with *Habanos* is the TTAB's decision in *Havana Club Holding S.A. v. Jimmy Buffett*, 2003 WL 1423117 (TTAB, March 13, 2007).⁵ In *Havana Club*, the TTAB determined that a Cuban company lacked standing to oppose a trademark registration by a U.S. applicant where the only damage alleged was the remote and contingent threat posed by the applicant's use of the mark should the Cuban embargo be lifted. The same argument was presented in *Habanos*, however, in *Habanos* the TTAB held that standing did exist. As argued above, however, *Habanos* presented two crucial factual issues that are not present here: first a letter from the Treasury Department which arguably gave Habanos the specific license needed under the Regulations to engage in the transfer of intellectual property interests in the United

⁴ This fact was discussed and conclusively determined in the Board's opinion *In re Timothy J Sheehan*, 1998 WL 611625 (T.T.A.B. September 10, 1998).

⁵ *Havana Club* is not citable as precedential authority of the T.T.A.B. However, Applicant mentions it here as indicative of the conflict among the opinions on the issue of standing of a Cuban national to contest the registration of a mark with the USPTO.

States.⁶ Second, the *Habanos* matter involved a significant and material degree of misdescriptiveness—an issue which is not a factor in this matter at all.

Moreover, *Havana Club* is in alignment with authority issued by the federal courts considering similar – if not identical – issues. For example, the Second Circuit held in *Havana Club Holding, S.A. v. Galleon S.A.* (“*Galleon V*”) that conferring standing upon a Cuban entity that claims only potential harm would require the court to “expand its authority well beyond any zone of twilight that might exist between legislative and judicial authority.” 203 F.3d 116, 132 (2d Cir. 2000). Importantly, and directly relevant to the standing of Opposer in this action, the *Galleon V* Court rejected the Cuban entity’s claim of standing by noting that

[e]ven if [Havana Club] competes with Bacardi in markets elsewhere in the world, standing requires that [Havana Club] demonstrate at least potential commercial injury in the United States, because Bacardi sells ‘Havana Club’ rum only in the United States. Because [Havana Club’s] rum does not now compete with Bacardi’s rum in the United States, **[Havana Club’s] alleged injury amounts to the present diminution in the speculative value of its sales of Cuban-origin rum in the United States market once the United States government removes the obstacle of the Cuban embargo.**

203 F. 3d at 132 (emphasis added). This logic is directly relevant to the instant dispute.

Furthermore, the Second Circuit’s opinion in *Empresa Cubana Del Tabaco v. Culbro Corp.* is illustrative of the fact that Opposer is foreclosed from claiming standing in this matter. *Empresa* involved claims brought under §43(a) of the Lanham Act by a Cuban company that had not sold any product in the U.S. The Second Circuit quickly short-circuited the Cuban opposer’s claim of standing by unequivocally holding that the Cuban embargo served to bar the Cuban opposer from acquiring an interest in the mark at issue. As argued by Applicant above, the *Empressa* Court held that any grant of rights in the mark at issue would amount to a transfer of

⁶ “[A]bsent a general or specific license, § 515.201(b)(1) of the Regulations prohibits a transfer of property rights, including trademark rights, to a Cuban entity.” *Empress Cubana Del Tabaco*, 399 F.3d at 473.

property interests to the Cuban opposer, which was specifically prohibited by the Regulations. *Empresa*, 399 F.3d at 473.

Applying the holding of *Empresa* to the question of standing and the requirement that a party demonstrate a “real interest” in the outcome of the proceedings, it is difficult to imagine how Opposer can claim a direct commercial interest in property it may could never legally obtain until the United States changes a law that has been in place for over forty years.

As mentioned above in the discussion involving *Habanos*, it is notable to point out that Opposer’s counsel also represented the losing party in the *Empresa* case. Incredibly, it appears that Opposer now proffers the same losing arguments that were offered, and rejected, in *Empresa*. Opposer has not provided any reason why this Board should deviate from its prior decisions, or the logic advanced repeatedly by Federal Courts.

Accordingly, this Board should find that Opposer has no standing to bring the instant opposition proceeding, and (i) deny Opposer’s claim for summary judgment, and (ii) grant Applicant’s cross-motion for summary judgment.

B. OPPOSER INTENTIONALLY ABANDONED ANY PLANS TO REGISTER OR USE THE CUBITA MARK IN THE UNITED STATES.

Opposer’s motion for summary judgment included numerous exhibits, all of which were translated from Spanish to English by Ms. Debra Evenson, an attorney in Opposer’s counsel’s law firm. Applicant does not challenge the accuracy of Ms. Evenson’s translation, or the validity of the documents themselves. In fact, it is Applicant’s position that the documents paint an accurate portrayal of the events, as well as the parties’ mutual understandings, surrounding Applicant’s acquisition of the CUBITA mark in the United States.

With that as a backdrop, Applicant refers this Board to “The Declaration of Reynol Sampedro Vazquez and Exhibits 1-3 Attached Thereto”, submitted by Opposer as part of its Motion for Summary Judgment. The declaration entitled “Sampedro Declaration Exhibit 3 – Translation”, is a print out of an email dated March 23, 2000, from Jesus Sanchelima (Applicant’s prior counsel) and “Lic. Martinez”, Cimex’s prior counsel. Since Opposer has included this declaration in its motion for summary judgment, and has not questioned its authenticity or its contents, the Board can exercise judicial notice regarding the statements made therein.

In that email, Applicant’s prior counsel was recalling a conversation it had with Cimex’s attorneys, and stated, “[w]ith respect to [Cimex], we understand that **it never had an interest in protecting its trademark rights in the United States and that those that it could have had fell into the public domain some time ago** for not having taken appropriate measures.” (emphasis added).

This statement clearly illustrates the fact that Cimex had absolutely no intention of seeking any trademark rights for the CUBITA mark in the United States. Put another way, by March 23, 2000, Cimex unequivocally conveyed its position to Mr. Sanchelima that Cimex had voluntarily abandoned any rights it may have been able to acquire in the United States in and to the CUBITA mark.

Perhaps Cimex might argue that Mr. Sanchelima’s email is ambiguous, or presents only one side of a conversation. That assertion, however, would be disingenuous. Indeed, Cimex cannot argue on the one hand that Mr. Sanchelima was actively involved in discussions with Cimex regarding the CUBITA trademark, but on the other hand argue that Mr. Sanchelima’s March 23, 2000 correspondence with Cimex’s counsel was anything but accurate. Simply put,

the March 23, 2000 email proffered by Opposer reveals the fact that Cimex specifically abandoned any plans it may have had to pursue trademark rights in the United States.

When comparing the email against actual events, it is clear that Applicant's position on this issue is correct. In 2000, Cimex told Mr. Sanchelima that it had no intention of pursuing any rights in the U.S. Not surprisingly, therefore, Cimex did not file a single motion or response in the very public battle that Applicant had with Timothy Sheehan over the CUBITA mark in the *Ruta Maya* case in 2004. Likewise, Cubita did not try to register the mark on its own at any time, despite the fact that it knew that Applicant was using the mark in the United States.

Instead, Opposer waited almost ten years until Applicant had met with a degree of success and then, sensing an opportunity to interfere with Applicant's burgeoning business, raised an objection to Applicant's use of the CUBITA mark for the first time ever.

In light of the fact that Cimex specifically abandoned plans to pursue trademark rights in the United States, this Board should deny Opposer's motion for summary judgment, and grant Applicant's cross-motion for summary judgment.

II. APPLICANT IS ENTITLED TO SUMMARY JUDGMENT ON ALL CLAIMS.

Applicant respectfully moves this Board to grant summary judgment against Opposer and in favor of Applicant on all claims raised by Opposer in its Notice of Opposition.

In doing so, and for the sake of efficiency, Applicant will not repeat all of the cases, facts, and arguments it offered in this Response, above. Instead, Applicant hereby repeats and re-alleges (i) all statements of undisputed material facts described earlier in this Response, (ii) all arguments raised by Applicant throughout this Response, and (iii) all references to TTAB and Federal Court cases that consistently favor Applicant's position.

CONCLUSION

For the reasons stated herein, Applicant respectfully moves this Board to grant summary judgment in favor of Applicant, and permit Applicant's trademark registration (Serial No. 75/697908) to proceed unabated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Response was served by electronic mail by agreement of the parties on June 30, 2008, upon David B. Goldstein, Esq., attorney for Opposer Corporacion Cimex S.A., at dgoldstein@rbskl.com.


BRADLEY J. GROSS

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